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**FISCAL IMPACT STATEMENT**

**LS 7269**

**BILL NUMBER:** HB 1273

**NOTE PREPARED:** Apr 1, 2011

**BILL AMENDED:** Mar 31, 2011

**SUBJECT:** Consumer Protection Matters.

**FIRST AUTHOR:** Rep. Koch

**FIRST SPONSOR:** Sen. Zakas

**BILL STATUS:** CR Adopted - 2<sup>nd</sup> House

**FUNDS AFFECTED:** ☒ **GENERAL**  
☒ **DEDICATED**  
**FEDERAL**

**IMPACT:** State & Local

**Summary of Legislation:** (Amended) *Definition of Health Care Provider:* For purposes of the statute authorizing the Attorney General to take certain actions with respect to abandoned health records and other records containing personal information, the bill provides that a "health care provider" includes a person licensed, certified, registered, or regulated by a board listed in the statute governing health professions standards of practice.

*Telephone Solicitation of Consumers:* It specifies that the statute governing the quarterly listing of telephone numbers of Indiana consumers who request not to be solicited by telephone applies to a residential telephone subscriber who, for the service received: (1) has a place of primary use in Indiana; or (2) is issued an Indiana telephone number or an Indiana identification number; in order to include within the protections afforded by the statute subscribers of interconnected VOIP service, subscribers of mobile telecommunications services, and users of a prepaid wireless calling service.

The bill also requires the Attorney General's Consumer Protection Division to notify Indiana residents of the right of any of those subscribers or users to place a telephone number on the listing. It provides that for purposes of the same statute, a "telephone sales call" includes, in addition to calls made through automated dialing or recorded message devices, transmission of the following: (1) Text or graphic messages using short message service (SMS). (2) Images, photographs, or multimedia messages through multimedia messaging service (MMS).

*Deceptive Consumer Sales:* The bill amends the statute concerning deceptive consumer sales to: (1) provide that a violation of the federal Fair Debt Collection Practices Act (FDCPA) is a deceptive act that is actionable by the Attorney General under the statute (but that is not subject to an action by an individual or to a class

action); and (2) include cross-references to certain consumer protection statutes, the violation of which constitutes a deceptive act subject to the penalties and remedies set forth in the statute. The bill also limits the civil penalty that the Attorney General may recover for a violation of the FDCPA to \$1,000 per consumer.

*Home Loan Practices:* It specifies that for purposes of the statute governing home loan practices, a "deceptive act" includes a knowing or intentional misrepresentation made regarding real estate transactions, as well as mortgage transactions.

*Department of Insurance:* The bill provides that the statute requiring the Department of Insurance (Department) to establish and maintain an electronic system for the collection and storage of certain information about persons participating in or assisting with certain residential mortgage transactions also applies in the case of residential real estate transactions that: (1) do not involve a mortgage transaction; and (2) are closed by a closing agent after December 31, 2011. It requires certain additional information about residential mortgage transactions and residential real estate transactions to be collected and stored in the system.

*Vital Records Provisions, Indiana State Department of Health (ISDH):* The bill specifies that a professional who violates the vital statistics statute is to be disciplined under the professional's license instead of imposing a Class B misdemeanor and that the ISDH may not sanction providers for certain violations under the statute until January 1, 2012.

*Medical Licensing Board (MLB) Investigations:* The bill authorizes the Medical Licensing Board to investigate and assess civil penalties for specified violations by licensed physicians. It requires the Attorney General's Division of Consumer Protection to forward complaints for specified violations to the MLB unless certain circumstances are met. It also specifies reporting requirements of penalties and prohibits the MLB from reporting specified administrative penalties.

*Physician Compliance Fund:* The bill establishes the nonreverting Physician Compliance Fund consisting of penalties assessed and collected by the MLB for violations determined by the MLB through investigations.

*Contracts for Dental Services:* The bill prohibits dental insurers and health maintenance organizations from requiring dentists to accept certain payments.

**Effective Date:** Upon passage; July 1, 2011.

**Explanation of State Expenditures:** *Attorney General (AG):* The bill potentially increases costs for the AG with the following provisions.

*Definition of Health Care Provider:* The definition of a health care provider is expanded under the bill extending the abandoned health care records provisions to apply to a person licensed, certified, registered, or regulated by any of the health care professional boards. [The law requires the AG to determine the records are abandoned, notify patients and others named in the files, and maintain the records for the time specified in statute or three years. Costs under this section are paid from the Health Records and Personal Identifying Information Protection Trust Fund enacted in law in 2010.]

*Telephone Solicitation of Consumers:* The definitions used in the Telephone Solicitation of Consumers Law are amended to indicate that phones using VOIP and mobile telecommunications services are covered and that telephone sales calls include text and graphic messages using short message service. These changes may

increase the number of enforcements made. Also, the AG must include subscribers of interconnected VOIP and mobile telecommunications services in notifications of Indiana residents. [The Telephone Solicitation Fund is composed of fees charged to telephone solicitors for a copy of the telephone privacy list and fines for violations of the Telephone Solicitation of Consumers Law, and the Fund pays for administration of the provisions of the statute and for deceptive acts concerning federal telephone equipment laws. In FY 2010, the Fund received revenue of \$607,500 and had expenses of \$523,900.]

*Deceptive Consumer Sales and Home Loan Practices:* The AG may have additional causes of action arising from violation of federal debt collection laws and out of the clarification that a deceptive act refers to a real estate transaction as well as a mortgage transaction. If the AG is successful in prosecuting the action, the AG may be awarded attorney fees and a civil penalty not to exceed \$1,000 per consumer.

*Department of Insurance (DOI):* Modifications to the system required under the bill have already been completed and will result in no additional fiscal impact. [The RREAL IN database has been up and running a little over a year and became accessible on January 1, 2010.]

(Revised) *Vital Records Provisions:* The bill would reduce the number of individuals subject to the Class B misdemeanor penalty for recklessly violating or failing to comply with the requirements for electronically recording births or deaths by specifying that persons holding professional licenses would be subject to licensing sanctions instead. The bill specifies that ISDH may not begin sanctioning until January 1, 2012. The bill would decrease the amount of court fees and fines associated with a Class B misdemeanor, while licensure sanctions may increase in the Indiana Professional Licensing Agency. Any fiscal impact is likely to be small.

(Revised) *Medical Licensing Board (MLB) Investigations:* The MLB would investigate complaints concerning licensed physicians who currently are investigated by the AG's Division of Consumer Protection. If many complaints are transferred from the Division of Consumer Protection, the MLB could require more meetings to conduct the additional hearings and appeals. Additional board meetings would result in more per diem paid to the members of the MLB to conduct the business brought on by investigations.

The Professional Licensing Agency (PLA) work group assigned to the MLB would see an increase in their workload to provide the administrative support to the MLB's investigations. The additional funds and resources required by the PLA could be supplied through existing staff and resources currently being used in another program or with new appropriations. Ultimately, the source of funds and resources required to satisfy the requirements of this bill will depend on legislative and administrative actions.

(Revised) *Attorney General:* This provision would reduce the AG's Division of Consumer Protection administrative time devoted to MLB investigations.

(Revised) *Contracts for Dental Services:* If an insurer or health maintenance organization (HMO) requires a dentist to accept an amount established by an insurer as payment for health care services provided to an insured, under the bill this act would be considered an unfair and deceptive act. To the extent insurance providers and HMOs are found to have engaged in additional unfair and deceptive acts, this bill will increase workload of the Department of Insurance to investigate allegations and provide adjudicative proceedings to determine if an unfair or deceptive act has been committed.

**Explanation of State Revenues:** (Revised) *Physician Compliance Fund (PCF):* The bill would establish the PCF to fund the administration and enforcement of investigations of physicians conducted by the MLB.

The PCF would consist of revenue from civil penalties collected by the MLB from physicians who have been determined by the MLB to have committed a violation. The amount of revenue the PCF could receive is indeterminable and would depend on the number of civil penalties assessed in future years by the MLB. The bill places a limit of \$1,000 per penalty assessed by the MLB for a violation. Revenue in the PCF at the end of a state fiscal year would not revert to the state General Fund.

(Revised) *Contracts for Dental Services*: If this bill increases the number of unfair and deceptive acts discovered by the Department of Insurance, revenue to the General Fund will increase from civil penalties paid by violators. The penalty for engaging in an unfair and deceptive act is one or more of the following: (1) a civil penalty between \$25,000 and \$50,000 for each act or violation and (2) revocation of a person's license or certificate of authority if they knowingly engaged in an unfair or deceptive act. Actual increases in revenue are unknown.

**Explanation of Local Expenditures:**

**Explanation of Local Revenues:**

**State Agencies Affected:** AG; DOI; (Revised) ISDH; IPL, MLB

**Local Agencies Affected:**

**Information Sources:** Randall Evans, DOI, 317-234-5881; Logan Harrison, DOI, 317-234-7734; and Indian Professional Licensing Agency.

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